Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-93

Glynn Reine, Emile Aime, Gary Babin and Mike LeBlanc,

Appellees,

versus

Town of Sorrento Municipal Democratic Executive Committee, Emile Lambert, Chairman, Town of Sorrento Municipal Democratic Executive Committee, R. E. Champagne, Member, Town of Sorrento Municipal Democratic Executive Committee, Morris Gautreau, Member, Town of Sorrento Municipal Democratic Executive Committee, and Newly Elected Councilman, Roland Melancon, Newly Elected Member of Town of Sorrento Municipal Democratic Executive Committee, Wade O. Martin, Secretary of State, State of Louisiana, The Town Council of the Town of Sorrento, Percy Boudreaux, A. J. Kling, J. B. Melancon and Roy Melancon,

Appellants.

On Appeal from the United States District Court for the Middle District of Louisiana (Three-Judge Court)

MOTION TO AFFIRM

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Appellees, pursuant to Rule 16 (1)(d) of the Rules of

the Supreme Court of the United States of America, move that the final Judgement and Order of the District Court be affirmed on the ground that the decision of the District Court is so obviously correct as to warrant no further review by this Court.

OPINIONS BELOW

The opinion of the District Court is not reported, but is set forth in Appendix A of Appellant's jurisdictional statement.

JURISDICTION

The jurisdictional requisites are adequately set forth in Appellants' jurisdictional statement.

QUESTIONS PRESENTED

The statement of the Appellants set forth three (3) questions to be considered by this Court. They are as follows:

"1. Whether the District Court of Three Judges erred in holding that the Jurisdiction was conferred upon it pursuant to 28 U.S.S.C. 1343.

"2. Whether the District Court of Three Judges erred in holding, as it did, that the plaintiffs were not estopped from contesting the validity of the March 24, 1974, municipal election.

"3. Whether the District Court of Three Judges erred in holding, as it did, that the plaintiffs herein have established a cause and/or a right of action pursuant to the Voting Rights Act of 1964, 42 U.S.C. 1973(c)."

STATUTE INVOLVED

The action was brought pursuant to Section 5 of the 1965 Voting Rights Act, 42 U.S.C. 1973(c).

Under Section 5, of that Act, whenever a state or political subdivision seeks "to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting, different from that enforced or in effect, on November 1, 1964," such state or political subdivision must, either obtain a declaratory judgement from the United States District Court for the District of Columbia, that such "qualification, prerequisite, standard, practice or procedure, does not have the purpose, and will not have the effect of denying or abridging the right to vote on account of race or color," or submit said voting qualification, standard, practice, or procedure to the Attorney General and receive no objection from the Attorney General within sixty (60) days after such submission. (Aug. 6, 1965, PL 89-110, Sec. 5, 79 Stat. 439) 42 U.S.C. 1973 (c). In the case at hand, Act 106 of the 1972 Louisiana Legislature was submitted by Louisiana's Attorney General to the United States Department of Justice on February 19, 1973. Approximately thirty-three (33) days later, on March 24, 1973, the Town of Sorrento held elections for Town Councilmen or Aldermen, according to the new standard practice or procedure, with respect to voting, different from that in force or effect on November 1, 1964, as provided for by Act 106 of the 1972 Louisiana Legislature. On April 20, 1973, approximately sixty (60) days after its submission, the United States Assistant Attorney General in the Civil Rights Division, interjected an opposition to Act 106 of the 1972 Louisiana Legislature. Therefore, Act 106 has never been given legal effect.

STATEMENT OF THE CASE

Traditionally, and on November 1, 1964, the procedure followed by the Town of Sorrento in the conduction of its election for Town Aldermen or Councilmen was to have all candidates run at large against each other. The Louisiana Legislature in 1972, however, passed Act 106, which provided that in any future elections in a municipality where there were two (2) or more offices of the same kind or character to be filed, the election shall be by divisions. Each candidate was required to qualify for a particular division and was to be assigned a letter designation for such division. The procedure provided for by Act 106 of the 1972 Legislature, enacted into law as L.S.A.-R.S. 18:309 E was different from that previously followed by the Town of Sorrento.

On June 25, 1972, Act 106 was approved by Louisiana's Governor and, accordingly, it went into effect on January 1, 1973. Subsequently, suit was filed in the United States District Court, Western District of Louisiana, Lake Charles Division, seeking to enjoin the election for city councilmen in the City of Lake Charles, scheduled for March 24, 1973, pursuant to the provisions of Act 106, of the 1972 Louisiana Legislature. Judge Edwin F. Hunter, Jr., Judge of the United States District Court for the Western District of Louisiana, declared that the State Statute was illegal and inapplicable to the election of the members of the Lake Charles City Council on March 24, 1973, for the reason that it did not comply with the provisions of 42 U.S.C.A. Sections 1973 (c). Judge Hunter ordered that the March 24, 1973, election be held on an at large basis, in accordance with the procedure in effect on November 1, 1964, and not by divisions as provided for by Act 106 of the 1972 Session of the Louisiana Legislature,

Wilfred Lada v. The City Council of the City of Lake Charles, Louisiana, (Civil Action Number 18275, W.D., La. Lake Charles Division).

On February 15, 1973, Louisiana's Attorney General mailed a copy of Act 106 of the 1972 Louisiana Legislature to the United States Department of Justice for approval. On February 19, 1973, the United States Department of Justice received the copy mailed and the submission was completed.

A copy of the *Lada* decision was received by Honorable Wade O. Martin, Jr., Secretary of State for the State of Louisiana. Since the Secretary of State was responsible for the printing of ballots for the 63 municipalities scheduled to hold elections on March 24, 1973, on February 16, 1973, Mr. Martin wrote a letter to the Louisiana Attorney General seeking his opinion on the subject matter.

On February 18, 1973, Attorney General Guste responded to Secretary of State Martin's request with a three and one-half page opinion, marked for immediate release. In that opinion of the Louisiana Attorney General, Act 106 of the 1972 Louisiana Legislature was quoted, as well as, 42 U.S.C.A. 1973(c). The Louisiana Attorney General stated that it was the opinion of his office that Act 106 should not be applied with respect to elections in the 63 municipalities scheduled for March 24, 1973. Attorney General Guste stated that it was his opinion that Judge Hunter's order in the *Lada* case should be applied uniformly to the 63 municipalities. The opinion further stated:

> "If, for example, we proceed with the 63 other elections under Act 106, we would run the risk of having these contests voided by subsequent Court action."

This opinion was made available to the Town of Sorrento Municipal Democratic Executive Committee. On February 19, 1973, a telegram was sent by Attorney General William Guste, to the Chairman of each municipal executive committee stating that filing should be re-opened in light of the Federal Court's opinion rendered on February 16, 1973, in holding Act 106 illegal and inapplicable.

On February 22, 1973, Secretary of State Martin wrote to Attorney General Guste, stating that the committee representatives from Mamou and Sorrento had informed him by telephone that they did not intend to follow the ruling that they should re-open qualifying candidates. On that same date, Attorney General Guste wrote back that his opinion of February 18, 1973 (as are all opinions of the Attorney General), was only advisory and, therefore, that if a municipality insisted upon holding elections for at large positions pursuant to Act 106, they should be permitted to do so. A copy of this letter was sent to Honorable Emile Lambert, Chairman of the Town of Sorrento Municipal Democratic Executive Committee.

On February 26, 1973, Emile R. Lambert, Chairman of the Town of Sorrento Municipal Democratic Executive Committee wrote to Secretary of State Martin as follows:

> "This will advise you that the Democratic Executive Committee for the Town of Sorrento has decided not to re-open qualifications for municipal offices as suggested by the Attorney General's opinion on this matter. . . ."

On March 24, 1973, election for Town Councilmen or Aldermen was held in approximately 63 municipalities in the State of Louisiana. **Only** in the Town of Sorrento was the

election held under the provisions of Act 106 of the 1972 Legislature. In **all** other municipalities, the procedure followed was that suggested by the Louisiana Attorney General and that which was in effect on November 1, 1964, in accordance with the 1965 Voting Rights Act.

Candidates for Councilmen in the Town of Sorrento were called upon to qualify and file initially on a division basis, as provided for by Act 106. Subsequently, they were called and told to refile on an at large basis as was the procedure followed in all prior elections. Plaintiff candidates thereupon assumed that they would be running on a strictly at large basis. It was only shortly before the actual election that Petitioner-Candidates learned that they would not be running on an at large basis, as they had requalified, but rather on a division basis which was the procedure for which they had qualified initially. (Depositions of Glynn Joseph Reine, Page 23-24, Page 41-46; Emile Joseph Aime, Page 14-17; Gary J. Babin, Page 8-10, Page 40-43.)

On April 3, 1973, Glynn Reine, Emile Aime and Gary Babin, who were unsuccessful candidates In the Town of Sorrento, March 24, 1973, Election and Mike LeBlanc, a citizen and tax payer of the Town of Sorrento, filed this Petition in the United States District Court in and for the Middle District of Louisiana, Baton Rouge Division.

Subsequently, a Motion to Drop Third Party Defendant was filed by the Secretary of State for the State of Louisiana, which Motion was granted.

On July 27, 1973, a Three-Judge Federal panel was appointed by John R. Brown, Chief Judge of the Fifth Circuit

Court of Appeals. A hearing by that Three-Judge Federal panel was held on November 27, 1973, at the United States Courthouse in New Orleans, Louisiana. Decision was rendered on April 18, 1975, by the Three-Judge Federal panel, which opinion is reproduced as Appendix A to Appellants' Jurisdictional Statement.

REASONS FOR GRANTING THE MOTION TO AFFIRM

1. AS TO THE APPELLANTS' CONTENTION THAT THE DISTRICT COURT OF THREE JUDGES ERRED IN HOLDING THAT THE JURISDICTION WAS CONFERRED UPON IT PURSUANT TO 28 U.S.C. 1343.

This suit was instituted by private citizens pursuant to Title 28, United States Code, Section 1343(3). That statute provides as follows:

> "The District Courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . . . . (3) to address the deprivation under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by an Act of Congress, providing for equal rights of citizens, or of all persons within the jurisdiction of the United States" 28 U.S.C. 1343(3).

Congress, in enacting Section 5 of the 1965 Voting Rights Act, authorized plaintiffs herein to secure the relief which they seek. Therefore, the District Court has original jurisdiction in this matter. *Allen v. State Board of Elections*, 393 U. S. 544, 554-557 (1969).

Plaintiffs' complaint was heard by a District Court of

three (3) judges, pursuant to the provisions of 28 U. S. C. 2284. Plaintiffs were commanded to do so by the language of Section 5 of the 1965 Voting Rights Act, "Any action under this Section shall be heard and determined by a Court of Three (3) Judges in accordance with the provisions of Section 2284 of Title 28 of the United States Code and any appeal shall lie to the Supreme Court." (August 6, 1965, PL 89-110, Sec. 5, 79 Stat. 439), 42 U.S.C. 1973(c).

Furthermore, it has been held by this Court that a Federal Statute implies a private right of action in the Court of appropriate jurisdiction when the statute is passed to protect a class of citizens, although the statute does not specifically authorize members of the protected class to institute suit. *Allen v. State Board of Elections*, 393 U. S. 544, 557 (1969). In the case at hand, Section 5 of the 1965 Voting Rights Act provides: "**No person** shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice or procedure." Section 5 would be a meaningless provision unless private citizens and, specifically, the plaintiffs in the case at hand, are permitted judicial enforcement of the 1965 Voting Rights Act. *Allen v. State Board of Elections*, 393 U.S. 544, 557 (1969).

The Appellees (Plaintiffs) prayer for a declaratory Judgement by the District Court of three (3) Judges was brought pursuant to 28 U.S.C. 2201-2202. This Court has held that declaratory judgements as authorized by 28 U.S.C. 2201-2202, may be rendered by the District Court of three (3) judges in cases which are brought under 28 U.S.C. 1343. *Allen v. State Board of Elections*, 393 U.S. 544, 558-560 (1969).

42 U.S.C. 1973(c) authorized a District Court of three

(3) judges in suits brought by private litigants to enforce the provisions of the 1965 Voting Rights Act, *Allen v. State Board of Elections*, 393 U.S. 544, 561, 563 (1969).

Appellants' contention that the District Court of three (3) Judges erred in holding that the jurisdiction was conferred upon the Court cannot be seriously considered in light of the applicable code articles cited above and previous holdings by this Court.

The Appellants' claim on this point merits no further argument and must be considered a delay in tactics.

2. AS TO THE APPELLANTS' CONTENTION THAT THE DISTRICT COURT ERRED IN HOLDING THAT THE PLAINTIFFS WERE NOT ESTOPPED FROM CONTESTING THE VALIDITY OF THE MARCH 24, 1974, MUNICIPAL ELECTION.

The District Court's ruling on this issue is contained in the last paragraph of its opinion (Appendix A, Jurisdictional Statement, Page 17):

> "The Plaintiffs, unsuccessful candidates and voters, are not estopped to contest the validity of this election by participation in it. The confusion surrounding just how the election would be held, the possible damage to their candidacy that a pre-election challenge might have caused, and the importance of the rights the plaintiffs seek to vindicate suggest that this is not an appropriate case in which to apply any doctrine of estoppel. See *Toney v. White*, 5 Cir. 1973, 488 F.2d 310."

Appellants' contention is that the plaintiffs are estopped from maintaining this litigation by virtue of their knowing and voluntary participation in the contested election. The Appellants seek to have this Court invoke the equitable doctrine of "Estoppel in pais."

In support of that argument the case of *United States v. Georgia Pacific Company*, 241 Fed. 2nd 92 (9th Cir.-1970) is cited. That case concerns the enforcement of a thirty (30) year old agreement whereby an owner of timberlands was committed to donate part of the forest land to the government if the boundaries of the natural forest were extended to include the land. Over the years, the government made no claim, whatsoever, of the lumber company to convey any land under the 1934 document until 1961. In the meantime, Georgia Pacific had managed the timberland at a great deal of expense, adding considerable value to the land. The Court applied the equitable estoppel doctrine to that case. That case, however, was decided on contract and did not concern federal law as the case at hand and is clearly inapplicable here.

The Appellants' purpose in citing the case is obviously to display a discussion on the doctrine of equitable estoppel or "estoppel in pais." The authority cited by the Appellants cannot for that reason be seriously considered by this Court.

The other case cited by defendants is the case of *Thompson v. Brown*, 434 F.2nd 1092 (5th Cir., 1970). The issue in that case was removability under the Civil Rights Removal Statutes 28 U.S.C.A. 1443. The rights sought to be enforced were not federally created rights, but rights with remedies

under a State Statutory scheme. The Court indicated that the case was not a voting rights case in any respect.

Complaintants in that suit sought to have the case removed on grounds that the State Court will not observe the law. Unsuccessful candidates had contested the primary election in State Court. Later, there was a General Election and no contest was filed. The successful candidates sought to have the case removed to Federal Court. The Court ruled that any question touching on the successful candidate's qualifications to run in the primary election had been mooted for failure of the unsuccessful candidates to challenge the general election results.

The same issues are not present in the case at hand. Furthermore, there has never been a general election in Sorrento for Aldermen, so that in effect, the primary constitutes the election for Aldermen.

In the case of *Moore v. LaFleur County Board of Election Commissioners*, 351 F. Supp. 848, it was contended that since the United States Attorney General was aware of the at large election and had, in fact, sent federal observers to observe the election first hand and since he interposed no objection, that he acquiesced in the election and, therefore, was estopped from later objecting to the election procedure. This is the same principle or issue raised by Appellants in the case at hand. The Court rejected the argument as "untenable."

To argue that one is estopped from enforcing Federal Law against its violators if one does not take immediate action upon seeing that violation, irregardless of his education

and comprehension, is to relegate Federal Law to the position of farcicalness. The enforcement of Federal Law would then depend upon whim or fancy, whereby one is free to pick and choose whether or not the Federal law should be given force and effect in any particular situation. Rather, Congress enacts laws to be given full force and effect and expects remedies where there is a violation.

The Appellants' claim on this point merits no further argument.

3. AS TO THE APPELLANTS' CONTENTION THAT THE DISTRICT COURT ERRED IN HOLDING THAT THE PLAINTIFFS HEREIN HAD ESTABLISHED A CAUSE AND/OR A RIGHT OF ACTION PURSUANT TO THE VOTING RIGHTS ACT OF 1965, 42 U.S.C. 1973(c).

The Appellant offers as justification for his contention the fact that the plaintiffs are white.

The Appellant cites dica from *Allen v. State Board of Elections*, 393 U.S. 544, to support his contention that because the Voting Rights Act is an expression of Congress' firm intention to rid the country of racial discrimination in voting, the Appellees (plaintiffs) have no standing to sue because they are white. That decision actually supports this Motion to Affirm. In Allen, this Court stated that a Federal Statute implies a private right of action in the Court of appropriate jurisdiction when the statute is passed to protect a class of citizens, although the statute does not specifically authorize members of the protective class to institute suit.

In the case at hand, the Appellants are asking this Court to hold that only black citizens would have standing to maintain this cause of action. Appellants have not cited authority for such restrictive construction of Section 5 of the 1965 Voting Rights Act. Section 5 of the 1965 Voting Rights Act provides:

> "**No person** shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice or procedure."

The Appellees call this Court's attention to the words "**No person.**" The statute does not restrict its applicability to black persons as the Appellants would argue. To take such a narrow approach would leave Section 5, meaningless unless **all** private citizens, and, specifically, the Appellees, in the case at hand, are permitted to seek judicial enforcement of the 1965 Voting Rights Act. It is only through such an interpretation that the evils Congress intended to remedy by enactment of the act will be removed.

The suggestion by Appellants that the Appellees, as white citizens do not have a right of action under the Act must be rejected as untenable.

The District Court committed no error in the Judgement here appealed from declaring the election of March 24, 1973, for Town of Sorrento Councilmen unlawful and requiring that a new election be held.

CONCLUSION

For the foregoing reasons the Judgement of the District Court should be affirmed without further review of this Court.

RESPECTFULLY SUBMITTED:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this day, the 8 day of September, 1975, mailed a copy of this Brief to the Attorney for all parties to these proceedings, namely:

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